

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CORNHUSKER CASUALTY INSURANCE  
COMPANY,

Plaintiff,

v.

CHRIS KACHMAN and DEBBIE  
KACHMAN, husband and wife;  
ROCKERIES, INC., a Washington  
corporation; LESTER MADDEN and JANE  
DOE MADDEN, husband and wife and the  
marial community comprised thereof;  
BROOK SAMPLES, individually and as  
Personal Representative of the Estate of  
LEANNE SAMPLES,

Defendants.

Case No. C05-5026 RBL

ORDER GRANTING MOTION TO  
AMEND

THIS MATTER comes before the Court on Plaintiff Cornhusker Casualty's Motion to Amend [Dkt. #88], following the Ninth Circuit's Remand of this matter. Plaintiff Cornhusker seeks to Amend its Complaint to include a claim for a Declaratory Judgment holding that its handling of the underlying insurance claim does not constitute bad faith.

The underlying facts are well know to the parties and will not be repeated here. In short, the Ninth Circuit held that the notice of cancellation sent by Cornhusker was not received by Defendant Rockeries, Inc., and that Cornhusker was therefore obligated to provide insurance coverage to Rockeries for the

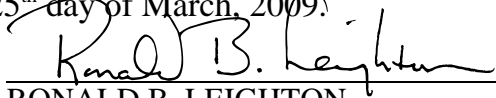
1 accident that killed Leanne Samples<sup>1</sup>. Following the Remand, and consistent with it, Plaintiff  
2 Cornhusker paid its \$1,000,000.00 policy limits (plus interest) to Samples. Yet to be resolved are the  
3 *Olympic Steamship* attorneys' fee claim, and bad faith claims, which Rockeries assigned to Samples as  
4 part of a settlement<sup>2</sup> with her.

5 At 10:26 a.m on March 2, 2009, Cornhusker filed its Motion to Amend in this case. Its proposed  
6 amended complaint seeks a declaration that its handling of Samples's claim against Rockeries does not  
7 constitute bad faith under Washington law. A little more than two hours later, Samples filed an action in  
8 this Court, Cause No. 09-0273RSL, alleging diversity jurisdiction, and seeking damages for Cornhusker's  
9 bad faith handling of the Samples' claim against Rockeries.

10 Cornhusker argues that it should be permitted to amend its complaint, and to have the issue of its  
11 alleged bad faith resolved in this lawsuit. Samples argues that the declaration sought by Plaintiff  
12 Cornhusker is not justiciable, and amounts to an advisory opinion from the court. Its opposition to the  
13 Motion also relies on the fact that the Samples own bad faith case is pending before Judge Lasnik.

14 The court need not delve deeply into the justiciability arguments, explore the boundaries of  
15 comity, or referee the race to the courthouse. The case filed in Seattle and pending before judge Lasnik is  
16 inextricably intertwined with the case remanded here by the Ninth Circuit. This court was charged with  
17 "determining damages" in light of the Ninth Circuit's reversal of this court's prior Order of Dismissal.  
18 The Seattle case seeks "damages" arising from the exact same set of facts. It is by any measure "related"  
19 to this case, and will be transferred to this court in any event. The motion to Amend is GRANTED. The  
20 09-0273 case will be consolidated with this case upon transfer.

21 IT IS SO ORDERED this 25<sup>th</sup> day of March, 2009.

22   
23 RONALD B. LEIGHTON  
24 UNITED STATES DISTRICT JUDGE  
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26 <sup>1</sup>Defendant Brook Samples is Leanne Samples' husband and the Personal Representative of her Estate.

27 <sup>2</sup>Rockeries, Inc. settled with and obtained a judgment against Samples for \$2.3 million, an amount  
28 which was found to be reasonable in Pierce County Superior Court. In exchange for a covenant not to execute  
on the judgment, Rockeries assigned its rights (including its bad faith claim) against Cornhusker to Samples.